

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ALFREDIA PRUITT,

Plaintiff,

v.

GMAC d/b/a ALLY FINANCIAL,
MCCURDY & CANDLER, USAA
FEDERAL SAVINGS BANK,
GWINNETT COUNTY SUPERIOR
COURT, MERS, FEDERAL
NATIONAL MORTGAGE
ASSOCIATION, COURT OF
APPEALS OF THE STATE OF
GEORGIA, STEVE CASTLEN,
SANGEET CHOWFLA, MATTHEW R.
BROOKS, JANIS SMITH, JUDGE
DAWSON JACKSON, WADE
COPELAND, CARLOCK, COPELAND
& STAIR, LLP, MICHAEL DUGAN,
and TROUTMAN SANDERS,

Defendants.

Civil Action No.
1:16-cv-01616-AT

**USAA FEDERAL SAVINGS BANK’S MEMORANDUM OF LAW IN
SUPPORT OF ITS MOTION TO STAY DISCOVERY
AND PRETRIAL DEADLINES**

COMES NOW, USAA FEDERAL SAVINGS BANK (“USAA FSB”), a
named Defendant in the above-styled civil action and files this Memorandum of

Law in Support of its Motion to Stay Discovery and Pretrial Deadlines, respectfully showing this Honorable Court as follows:

RELEVANT FACTS AND PROCEDURAL HISTORY

On May 19, 2016, the Plaintiff filed her Complaint, which contains over 178 paragraphs, only two of which mention USAA FSB. Notably, the Plaintiff never served the Complaint upon USAA FSB.

The Complaint contains eight enumerated causes of action: (1) violation of the 14th Amendment; (2) violation of 28 U.S.C. § 1915; (3) claim under 42 U.S.C. § 1983; (4) violation of “the right to be heard and due process of law”; (5) “Defendants recklessly and intentional [sic] caused irreparable harm to Plaintiff”; (6) fraudulent transfer of title; (7) “violation of Plaintiff [sic] constitutional right to an appeal”; and (8) fraud. However, none of these causes of action are asserted as to USAA FSB.

On August 10, 2016, USAA FSB filed a Motion to Dismiss under Rule 12(b)(6) [Doc. 51]. As of this date, no discovery has been conducted.

ARGUMENT AND CITATION OF AUTHORITY

A. THIS COURT SHOULD RULE ON THE MOTION TO DISMISS BEFORE THE DISCOVERY PERIOD BEGINS

This Court should stay all pretrial deadlines and discovery until it rules on USAA FSB’s Motion to Dismiss. District courts have “broad discretion to stay

discovery pending decision on a dispositive motion.” *Panola Land Buyers Ass’n v. Shuman*, 762 F.2d 1550, 1560 (11th Cir. 1985) (citation omitted). Nevertheless, “Rules 8(a) and 9(b) are pleading standards which apply *before* the discovery period begins” *Inman v. Am. Paramount Fin.*, 517 F. App’x 744, 748-49 (11th Cir. 2013) (citation omitted) (emphasis in original). “Facial challenges to the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief should [] be resolved before discovery begins.” *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997). “If the district court dismisses a nonmeritorious claim before discovery has begun, unnecessary costs to the litigants and to the court system can be avoided. Conversely, delaying ruling on a motion to dismiss such a claim until after the parties complete discovery encourages abusive discovery and, if the court ultimately dismisses the claim, imposes unnecessary costs.” *Id.*

Here, the resolution of USAA FSB’s Motion to Dismiss could resolve all claims against USAA FSB and render any discovery conducted beforehand futile. Even if the motion is denied in any part, this Court’s order on the motion could allow the parties to conduct more pointed discovery on the issues identified in the order. Either way, it will save the parties from unnecessary time and money spent on discovery that may prove to be useless. Eleventh Circuit precedent leans heavily

in favor of granting a stay of discovery, and USAA FSB respectfully requests that the discovery period and all deadlines imposed by L.R. 26 and Fed. R. Civ. P. 26 be stayed pending a decision on its Motion to Dismiss.

CONCLUSION

Based on the foregoing, USAA FSB respectfully requests that this Court grant its Motion for Stay of Discovery and Pretrial Deadlines.

Respectfully submitted this 11th day of August, 2016.

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FONT CERTIFICATION

The undersigned counsel for Defendant hereby certifies that the within and foregoing was prepared using Times New Roman, 14-point font in accordance with LR 5.1(B).

This 11th day of August, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the within and the foregoing by CM/ECF or by placing a true and correct copy of same in the United States Mail, with first-class postage affixed thereto, properly addressed as follows:

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Respectfully submitted this 10th day of August, 2016.

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